

(2015) 02 CHH CK 0010
In the Chhattisgarh High Court
Case No : Writ Petition No. 1431 of 2003

Zila Sahkari Kendriya Bank Maryadit	Vs	APPELLANT
Ram Briksha Singh		RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 29(2), 5
Payment of Gratuity Act, 1972 — Section 4, 7, 7(4), 7(7)

Citation : (2016) 148 FLR 789 : (2015) LabIC 2227

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Rakesh Pandey, for the Appellant; H.S. Ahluwalia and S.P. Kale, Deputy Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—Invoking jurisdiction of this Court under Article 226/227 of the constitution of India, the petitioner has filed this petition questioning the order dated 29.03.2003 passed by appellate authority under the Payment of Gratuity Act, 1972 (for short the "Act of 1972"), by which the said authority has declined to extend the period of limitation beyond sixty days. Facts in brief, necessary for disposal of this petition are that, respondent No. 1 herein (since dead) preferred an application under Section 4 read with Section 7 of the Act of 1972 for grant of gratuity having been dismissed from service on 12.06.2000. The controlling authority, by order dated 31.05.2002 directed the petitioner-Bank to pay an amount of Rs. 1,54,252/- as gratuity to the respondent No. 1. The petitioner preferred an appeal on 31.10.2002 before the appellate authority under the Act of 1972. The appellate authority, by order impugned relying upon the provisions contained in proviso to sub-section (7) of Section 7 of the Act of 1972, dismissed the appeal barred by limitation holding that appellate authority has power to extend the period of limitation only to 60 days whereas appeal has been filed after a period of 120 days. Against the said order, instant writ petition

has been filed by the petitioner-Bank. Stating inter alia that the provisions of Section 5 of Indian Limitation Act is applicable to the appeal preferred before the appellate authority which has been opposed by the respondent No. 1 by filing his counter-affidavit.

2. Mr. Rakesh Pandey, learned counsel appearing for the petitioner would submit that such an order passed by the appellate authority under the Act, 1972 holding that appellate authority has no power to extend the period of limitation for preferring appeal beyond the period of sixty days, is bad and unsustainable in law, as by virtue of Section 5 of Indian Limitation Act, appellate authority has jurisdiction to condone the delay beyond the period of sixty days as such the order impugned deserves to be set aside.

3. On the other hand, Shri H.S. Ahluwalia, learned counsel appearing for the LR's of deceased respondent No. 1 would submit that the appellate authority has rightly rejected the appeal as barred by limitation. He would further submit that appellate authority has no jurisdiction to condone the delay beyond the period of sixty days as prescribed in 1st proviso to sub-section (7) of Section 7 of the Act of 1972 as such writ petition deserves to be dismissed.

4. The short question that falls to be answered is whether the appellate authority under the Payment of Gratuity Act, 1972 has power and jurisdiction to condone the delay beyond the period of sixty days as provided in 1st proviso to sub-section (7) of Section 7 of Act, 1972?

5. In order to answer the question raised, it would be appropriate to notice Section 7(7) of the Act of 1972.

"7. Determination of the amount of gratuity--

(1) to (6).....

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days,"

From a careful reading of the aforesaid proviso, it would appear that an appeal under sub-section (7) of Section 7 of the Act of 1972 can be filed within a period of sixty days from the date of receipt of order passed under sub-section (4) of Section 7 of the Act and appellate authority has the jurisdiction to extend the said period of sixty days by further period of sixty days, if he is satisfied that appellant was prevented by sufficient cause from preferring the appeal within said period of sixty days and no jurisdiction is vested with the appellate authority

to entertain an appeal which is filed beyond the period of 120 days from the date of receipt of the order.

6. The learned counsel for the applicant would submit that the appellate authority under the Act of 1972 is a court and the Section 29(2) of the Limitation Act will apply to the proceeding of the appeal under Section 7(7) of the Act.

7. At this stage, it would be appropriate to notice the decision of the Supreme Court in the matter of State of Punjab Vs. Labour Court Jullunder and Others, AIR 1979 SC 1981 : (1979) 39 FLR 353 : (1980) LabIC 1084 : (1981) 1 LLJ 354 : (1980) 1 SCC 4 : (1980) 1 SCR 953 : (1979) 11 UJ 878 , in which their Lordships held that the Act of 1972 enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It was further held that for enforcement of the provisions of the said Act of 1972, recourse cannot be taken to the provisions of any other law for enforcing the rights under the said Act.

8. A Division Bench of the Calcutta High Court in a matter of City College Vs. State of West Bengal and Others, 90 CWN 720 : (1987) 1 LLJ 41 , held that appellate authority under Section 7(7) of the Act, which is not a court has no jurisdiction to invoke Section 5 of Limitation Act, 1963 to condone the delay in preferring appeal filed after 120 days from the date of receipt of the copy of order passed under Section 7(4) of the Act of 1972.

9. The Bombay High Court in case of Shri Gurudeo Ayurved Mahavidyalaya and Another Vs. Madhav Narayan Mahakode and Others, (1994) 3 BomCR 27 : (1996) 1 LLJ 515 , followed the decision of City College (supra) rendered by Calcutta High Court by holding that the provisions of Section 5 of the Limitation Act cannot be invoked by the appellate authority under the Act of 1972 for condoning the delay beyond 120 days.

10. In the matter of Western Coalfields Ltd. Vs. Controlling Authority and Others, (2000) 86 FLR 312 : (2001) ILR (MP) 927 : (2000) 2 LLJ 965 : (2000) 3 MPHT 219 : (2000) 3 MPLJ 63 the Madhya Pradesh High Court has held that the appellate authority being the statutory authority under the Act of 1972 cannot condone delay or extend the period of limitation beyond the period prescribed in the Act of 1972 and held as under:--

"On a plain reading of the aforesaid provision it becomes luminously clear that the appellate authority has jurisdiction to condone the delay beyond the period of sixty days if sufficient cause is shown, by extending the said period by a further period of sixty days. It is to be borne in mind that the Payment of Gratuity Act is a special statute and there is provision for condonation of delay. Once the limitation period has been provided and there is further provision conferring the power on authority to condone the delay of 60 days beyond the specified period if sufficient cause is shown, the authority cannot travel beyond it. It is well settled in law that in absence of conferment of jurisdiction to condone delay the statutory authority which is a quasi judicial authority cannot condone delay or

extend the period of limitation.

11. The High Court of Andhra Pradesh in case of Warangal District Co-operative Society Ltd. Vs. Appellate Authority under Payment of Gratuity Act, 1972 and Others, (2002) 3 LLJ 616 , has held that the Payment of Gratuity Act, 1972 being the later enactment will prevail over the Limitation Act, 1963 and the appellate authority is empowered to extend the period of limitation by another sixty days and held as under:--

"11. However, the difficulty in this case is that the limitation prescribed under the payment of Gratuity Act, once again an enactment made by Parliament is only 60 days for the purpose of preferring an appeal. Under the proviso to Section 7, sub-section (7), the appellate authority is empowered to "extend the period" of limitation by another sixty days. In other words, the appellate authority is empowered to condone the delay to upper limit of another sixty days beyond the prescribed period of limitation. No doubt, the Payment of Gratuity Act does not expressly exclude the operation of the Limitation Act, but the fact remains that the Payment of Gratuity Act is of the year 1972 where the Limitation Act is of the year 1963. The settled principle of interpretation of statutes is that if there are two mandates by the Sovereign Legislature, the later of the two shall prevail. Therefore, the fact that there was no express exclusion of Section 5 of the limitation under the Payment of Gratuity Act makes no difference while construing the scope of the power of the appellate authority constituted under the Payment of Gratuity Act, to condone the delay a preferring the appeals. The legal position enunciated by the Supreme Court in Shantilal M. Bhayani v. Shanti Bai (1995 Suppl (4) SCC 578), in my view, must be understood in the context of the Limitation Act, 1963 and the special period of limitation, prescribed in any other special or local law prior to the date of the enactment of the Limitation Act. It is worthwhile mentioning that the Tamil Nadu Buildings (Lease and Rent Control) Act, which is the subject-matter of the issue before the Supreme Court in the above case was of the year 1960."

12. I am in respectful agreement with view taken by Calcutta High Court, Madhya Pradesh High Court and Andhra Pradesh High Court. Bearing in mind the principles of law laid down therein with regard to power of the appellate authority and keeping in view the provision contained in proviso to sub-section (7) of Section 7 of the Act. It is held that the appellate authority has power and jurisdiction to extend the period of limitation only for sixty days in addition to the prescribed period of sixty days for filing appeal from the date of receipt of copy of the order under Section 7(4) of the Act and he being a statutory/quasi judicial authority has no jurisdiction to extend the period of limitation beyond sixty days in absence of conferment of jurisdiction. If the facts of the present case are examined, it appears that the copy of the order was received by the appellant on 20.06.2002 and the appeal was filed on 31.10.2002 which is beyond the period of 120 days and by virtue of provision contained in 1st proviso to sub-section (7) of Section 7 of the Act, the appellate authority has no jurisdiction to condone the

delay and Section 5 of Limitation Act is not applicable to such proceeding, and as such appellate authority has rightly dismissed the appeal and no jurisdictional error has been committed by the appellate authority under the Act of 1972 warranting interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. As a fall out and consequence of the aforesaid discussion writ petition deserves to and accordingly dismissed. No order as to cost(s).